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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. 617

DOROTHY HORVATH,

Petitioner,

vs.

CITY OF MILWAUKEE,
a municipal corporation,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

DOROTHY E. HORVATH, *pro se*
115 E. Fairmount Ave.
Whitefish Bay, Wisconsin

HAMMERSMITH-KORTMEYER CO. MILWAUKEE

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JURISDICTION

The petitioner asserts that this Court has jurisdiction for the reason that the decision of the Wisconsin Supreme Court below denies the rights guaranteed the petitioner under both the Wisconsin Constitution and the United States Constitution. Certiorari should be granted under Rule 19.

QUESTIONS PRESENTED

1. Does imprisonment to make effective the imposition of a fine violate constitutional rights which prohibit involuntary servitude unless duly convicted of a crime?

2. Is mere imprisonment, without the imposition of labor, servitude?

STATEMENT

Petitioner was charged with violating various ordinances regulating motor vehicle parking. Petitioner appeared before County Court-Traffic Division, Milwaukee, Wisconsin, presided over by the Honorable John E. Kreuger, on March 2nd, 1964. Petitioner was not represented by counsel. Petitioner did, however, raise constitutional objection to the proceedings which the trial judge duly noted on the record.

The court proceeded with immediate trial and found the petitioner guilty. The judgment was entered ordering the petitioner to immediately pay a fine of $56 plus costs of $55.

Petitioner inquired whether she could appeal the decision were the fine paid. The city attorney stated that if petitioner posted a bond, this would be forfeited on the first appeal and she would lose all rights of appeal to a higher court.

Petitioner then refused to post bond; petitioner insisted that this court did not have the power to imprison because no crime had been committed. Petitioner was then sentenced to fifty-five days in a city jail. Petitioner was committed to jail forthwith.

After three days in the city jail, petitioner secured counsel who informed her that it would be necessary to post cash bond in order to appeal. Cash bond was posted. Petitioner was released. An appeal was made to Circuit Court-Criminal Division, Branch 12, the Honorable Judge John L. Coffey presiding.

Judgment was affirmed in the Circuit Court, April 16th, 1965. The court ruled that the ordinance in this case was constitutional.

Petitioner appealed to the Supreme Court, State of Wisconsin, which on July 1, 1966 affirmed the judgment of the lower court.

ARGUMENT

This case raised the federal issue in the lower courts in relation to the constitutionality of Milwaukee Ordinance Sec. 101-321 which permits imprisonment upon failure to pay a fine, which authority is contained in Sec. 66.12, Wisconsin Statutes.

The case is very simply this: that imprisonment to make effective the imposition of a fine removes from the petitioner the freedom to determine one's acts, conditions of living, etc., and places the petitioner in a condition of involuntary servitude, until the conditions prescribed by the municipality or court are complied with.

Webster's definition of servitude quoted in *Hodges v. U.S.*, 203 US 1, is:

> "Service required as a punishment for a crime. Servitude a more or less rhetorical term, implies in general lack of liberty to do as one pleases, but specifically, lack of freedom to determine one's acts, laws, conditions of living, etc. State of being subject to a master."

The Wisconsin Supreme Court feels that imprisonment without labor is more analogous to an execution on the body of the petitioner and in no way constitutes servitude. To quote Webster again:

> "Servitude implies absolute and enforced subjugation to anothers will, synonymous to serf, menial, prisoner; antithesis, freedom, liberty, independence."

Under the case considered, the conditions imposed upon the petitioner clearly constituted a denial of liberty and freedom in order to force payment of the imposed fine. It provided the municipality with a bludgeon to extract the fine, barring any consideration as to the question of reasonableness.

The lower court has maintained that unless labor is required, imprisonment itself does not constitute servitude. Petitioner submits that a broader interpretation of the term servitude should be applied. In the case of *U.S. v. Gaskin,* 320 U.S. 525, it was held that even though the party imprisoned was not required to perform labor that his imprisonment did constitute involuntary servitude and violated his rights under the 13th Amendment. This seems a much more realistic and meaningful interpretation.

It is respectfully submitted that under the present narrow interpretation applied by the State and Local Courts, little impetus is provided to eliminate the causes of conditions; while harsh and questionable treatment is applied to the effects in an attempt to curb difficult local problems. As in the present case our treasured freedoms become secondary to local expediency.

CONCLUSION

That there has been an infringement upon the constitutional guaranteed liberties of the petitioner which afford a basis for jurisdiction of this court. The petition should therefore be granted.

Respectfully submitted,

DOROTHY E. HORVATH, *pro se*
115 E. Fairmount Ave.
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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

JOHN J. FLEMING, City Attorney

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STATEMENT OF FACTS

The facts set forth in the Statement submitted by the petitioner are basically correct, but we wish to make certain comments with respect thereto, in order that the record be clarified.

In the third paragraph under "STATEMENT" on page 2 of the petition, petitioner alleges that "the city

attorney" stated that the posting of a bond would result in loss of appeal rights and the bond itself. Nowhere does this appear in the record, nor is it a correct statement of Wisconsin law.

The petitioner was not compelled to perform labor of any kind.

ARGUMENT

The federal question presented herein involves the definition of the term "involuntary servitude." While quoting a definition of servitude from *Hodges v. U.S.*, 203 U.S. 1, 27 Sup. Ct. 6, 51 L. Ed. 65, petitioner overlooks the direct statement of the opinion which declares, in interpreting the 13th Amendment, that:

> "The meaning of this is as clear as language can make it. The things denounced are slavery and involuntary servitude, and Congress is given power to enforce that denunciation. *All understand by these terms a condition of enforced compulsory service of one to another.* * * *" (Emphasis supplied) *Hodges v. U. S., supra,* at page 16.

U. S. v. Gaskin, 320 U. S. 527, 64 Sup. Ct. 318, 88 L. Ed. 287, relied upon by the petitioner for the proposition that involuntary servitude does not necessarily involve the performance of labor, ignores the factual situation in that case that imprisonment was directed toward reducing the prisoner to a condition of peonage.

CONCLUSION

Neither Section 101-321, Milwaukee Code of Ordinances, nor Section 66.12 (1) (c), Wisconsin Statutes, 1963 (see Appendix) result in the imposition of involuntary servitude as defined by this Honorable Court. Ac-

cordingly, it is respectfully requested that the petition for a writ of certiorari to the Supreme Court of Wisconsin be denied.

Respectfully submitted,

JOHN J. FLEMING, City Attorney

PATRICK J. MADDEN, Assistant City Attorney.

Attorneys for Respondent.

APPENDIX

Section 101-321, Milwaukee Code of Ordinances

101-321. *Penalties.*

(a) Any person who shall violate any of the sections of Chapter 101, as set forth in Column 1 below, shall, upon the first conviction thereof, forfeit not more than the amount set forth in Column 2 opposite the section listed in Column 1, together with the costs of prosecution.

For the second conviction, within the number of years set forth in Column 4 opposite the section listed in Column 1, the forfeiture shall be not more than the amount set forth in Column 3, together with the costs of prosecution.

In default of payment of any forfeiture and costs of prosecution, the violator shall be imprisoned in the house of correction or the county jail until said forfeiture and costs are paid, but such imprisonment shall not exceed 90 days.

* * *

Section 66.12(1)(c), Wisconsin Statutes, 1963

(c) In case of conviction the court shall enter judgment against the defendant for the costs of prosecution, and for the penalty or forfeiture, if any, and that he be imprisoned for such time, not exceeding 90 days, unless otherwise provided by the ordinance, resolution or bylaw, as the court deems fit unless the judgment is sooner paid. Such judgment or the imposition of any penalty or costs may be suspended or deferred for not more than 30 days in the discretion of the court. Prisoners confined in the county jail or in some other penal or correctional institution for violation of a city or village ordinance, resolution or bylaw shall be kept at the expense of the city or village.